

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
EZEQUIEL ARROYO)	
Petitioner,)	
)	
v.)	Civil Action No. 05-11277-DPW
)	
BERNARD BRADY)	
Respondent.)	
_____)	

ANSWER

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent hereby answers the petition for writ of habeas corpus of the petitioner Ezequiel Arroyo.

1. Admitted.
2. Admitted.
3. Admitted. Answering further the respondent states that the petitioner was also sentenced to a concurrent term of three to five years on a firearm possession conviction.
4. Admitted. Answering further the respondent states that the petitioner was also convicted of illegal possession of a firearm.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
- 9(a)-(c). Admitted. Answering further, the respondent states that the citation for the Supreme Judicial Court's decision is 442 Mass. 135, 810 N.E.2d 1201 (2004).
- 9(d). Admitted.

9(e). Admitted.

9(f). Not applicable.

10. Admitted.

11. Not applicable.

12. The respondent states that paragraph 12 contains legal argument and conclusions to which no response is required. To the extent that a response is deemed necessary, the respondent denies the factual allegations contained in paragraph 12 of the petition insofar as they are inconsistent with the facts found by the Massachusetts Supreme Judicial Court in *Commonwealth v. Arroyo*, 442 Mass. 135, 810 N.E.2d 1201 (2004).

13. Denied. Answering further the respondent states that part of Ground Three was not presented to the state court as a federal claim.

14. The respondent states that he lacks knowledge or information sufficient to admit or deny the allegations contained in paragraph 14 and calls upon petitioner to prove same.

15(a)-(e). Admitted.

16. Admitted.

17. The respondent lacks the knowledge or information sufficient to admit or deny the allegations contained in paragraph 17 and calls upon petitioner to prove same.

And further answering the respondent has obtained transcripts from the petitioner's trial which will be supplied to the Court whenever deemed necessary. Pursuant to Rule 5 of the Rules Governing 28 U.S.C. §2254 cases, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

Volume I

1. Docket sheets, *Commonwealth v. Ezequiel Arroyo*, SUCR1998-11021.

2. Brief and record appendix on appeal to the Massachusetts Supreme Judicial Court (SJC-08991).
3. Brief for the Commonwealth of Massachusetts on appeal to the Massachusetts Supreme Judicial Court (SJC-08991).
4. Reply brief of defendant.
5. *Commonwealth v. Arroyo*, 442 Mass. 135, 810 N.E.2d 1201 (2004).
6. Petition for Rehearing.
7. Denial of Petition for Rehearing.

Volume II

1. Trial transcript, day two, January 17, 2002¹
2. Trial transcript, day three, January 18, 2002
3. Trial transcript, day four, January 22, 2002
4. Trial transcript, day five, January 23, 2002
5. Trial transcript, day six, January 24, 2002
6. Sentencing transcript, January 28, 2002

DEFENSES

1. The petition contains claims which have not been exhausted in the state courts.
2. The petition raises claims that are in procedural default.
3. In the alternative, the state court adjudication of the petitioner's claims was not contrary to or an unreasonable application of clearly established Supreme Court law nor was it based on an unreasonable determination of the facts in light of the evidence presented in the state court.

¹ Transcript volume one, jury impanelment, is not included in the supplemental answer because the petitioner has raised no claim concerning the impanelment phase of the trial.

The respondent respectfully reserves the right to amend or supplement this Answer in the future should the need arise.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200
BBO No. 561669

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached documents was served upon Donald Harwood, 305 Broadway, 7th Floor, New York, NY 10003, by first class mail, postage pre-paid, on July 28, 2005.

/s/ Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General